

INSURANCE ACT 1973

(PART III DIVISION 3A)

SCHEME FOR THE TRANSFER OF THE AUSTRALIAN INSURANCE BUSINESS OF HDI-GERLING AUSTRALIA INSURANCE COMPANY PTY LIMITED TO HDI-GERLING INDUSTRIE VERSICHERUNG AG

Background

- A. HDI-Gerling Australia Insurance Company Pty Limited (ABN 16 069 085 196) (**HDI-GAUS**) and the Australian branch of HDI-Gerling Industrie Versicherung AG (ARBN 134 049 951) (**HG/AUST**) are each authorised under the Insurance Act and carry on business as insurers through operations in Australia.
- B. This Scheme has been prepared under Part III Division 3A of the Insurance Act to give effect to the terms of an agreement by which HDI-GAUS and HG/AUST have agreed that the insurance business of HDI-GAUS be transferred from HDI-GAUS to HG/AUST and in particular that the Insurance Contracts and Reinsurance Contracts be transferred and that the liabilities under the Insurance Contracts be assumed by HG/AUST on the basis that the liabilities are liabilities in Australia for the purposes of the Insurance Act.
- C. An actuarial report dated May 2010 has been prepared by the Appointed Actuary in connection with the Scheme.

1. Definitions and Interpretation

1.1 Definitions

In this Scheme, unless the context requires otherwise:

Accounts means the information contained in the quarterly trial balance which is used as the basis for preparing the statutory returns submitted by HDI-GAUS to APRA in accordance with the requirements of the *Financial Sector (Collection of Data) Act 2001* (Cth) and the Insurance Act.

Actuarial Report means the report dated May 2010 prepared by Finity Consulting Pty Limited in connection with the Scheme.

Appointed Actuary means Adam Payne of Finity Consulting Pty Limited, being the appointed actuary of HG/AUST and HDI-GAUS.

APRA means the Australian Prudential Regulation Authority.

Assumed Liabilities has the meaning given to that expression in clause 4.

Business means the business of issuing contracts of insurance and reinsurance carried on by HDI-GAUS in Australia.

Claim means, in relation to any person, a claim, action, proceeding, judgment, damage, loss, cost, expense or liability incurred by or to or made or recovered by or against the person, however arising and whether present, future or contingent, whether ascertained or unascertained and whether arising before or after the Effective Date.

Effective Date means 1 July 2010.

Insurance Act means the *Insurance Act 1973* (Cth).

Insurance Contracts means all contracts of insurance, and all contracts and treaties of reinsurance, issued or entered into by HDI-GAUS as insurer or reinsurer prior to the Effective Date in the conduct of its Business.

Liabilities means claims, losses, liabilities, costs or expenses of any kind, including those which are prospective or contingent and those the amount of which is not ascertained or ascertainable.

Reinsurance Contracts means the contracts and treaties of reinsurance issued or entered into by HDI-GAUS (as cedant or reinsured) in respect of its liabilities under the Insurance Contracts, other than contracts and treaties of reinsurance issued by entities within the Talanx AG Group.

Shortfall MCR means the amount, if any, by which:

- (a) 145% of the Minimum Capital Requirement of HG/AUST based on the Prescribed Method (as those terms are defined in the Prudential Standards made under the Insurance Act); exceeds
- (b) the amount of HG/AUST's Capital Base (within the meaning of *Prudential Standard GPS 110 Capital Adequacy* made under the Insurance Act),

as determined by the Appointed Actuary in accordance with the Transfer Agreement.

Transfer Agreement means the Transfer Agreement dated 4 May 2010 between HDI-GAUS and HG/AUST for the transfer of the HDI-GAUS's insurance business to HG/AUST.

Transfer Value means the amount calculated by reference to the Accounts insofar as they relate to the Insurance Contracts and the Insurance Liabilities for the quarter ending 30 June 2010 in accordance with the methodology set out in the Schedule.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply in this Scheme unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.

- (d) A reference to a clause or schedule is a reference to a clause of or a schedule to, this Scheme.
- (e) A reference to an Agreement or document (including, without limitation, a reference to this Agreement) is to the Agreement or document as amended, varied, supplemented, novated or replaced except to the extent prohibited by this Scheme or that other Agreement or document.
- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

2. Transfer of Business

On the Effective Date, HDI-GAUS transfers to HG/AUST the Business and, in particular, the Insurance Contracts, and such transfer includes:

- (a) all right, title, interest, benefit and powers that have arisen, or may in the future arise under any of the above, including as against any reinsured or third party arising under or by virtue of any Insurance Contract, including but not limited to any claims by way of subrogation, contribution, outstanding premium and any other recoveries related directly or indirectly to any Insurance Contract;
- (b) any Liabilities that have arisen, or may in the future arise, in respect of any of the above; and
- (c) all right, title, benefit and interest of HDI-GAUS, including any entitlement to receive or recover any money or property, under or in relation to any Reinsurance Contract,

in accordance with the terms of the Transfer Agreement.

3. Consideration for the transfer of HDI-GAUS's insurance business

In respect of HG/AUST's assumption of all Liabilities under and any benefits arising under the Insurance Contracts, HDI-GAUS agrees to transfer cash to HG/AUST equal in value to the Transfer Value.

4. Assumed Liabilities

On and from the Effective Date HDI-GAUS transfers to HG/AUST and HG/AUST accepts the transfer of the Insurance Contracts (the **Assumed Liabilities**) and HG/AUST assumes and takes over and must indemnify and keep HDI-GAUS indemnified from and against all Claims under or in connection with the Assumed Liabilities. On and from the Effective Date, the Assumed Liabilities will be liabilities of HG/AUST which it is required to satisfy through its Australian branch.

5. Proceedings

If any proceedings are pending or any proceedings are brought on or after the Effective Date by or against HDI-GAUS in any court or tribunal in respect of the Insurance Contracts, such proceedings will be continued by or against HDI-GAUS for and on behalf of HG/AUST and any judgment or determination for or against HDI-GAUS in any such proceedings will have effect as between HDI-GAUS and HG/AUST as if such judgment or determination had been made for or against HG/AUST and HG/AUST will indemnify and keep indemnified HDI-GAUS accordingly.

6. Effective Date

The transfer of the Business from HDI-GAUS to HG/AUST, and the assumption of the Assumed Liabilities by HG/AUST, pursuant to this Scheme take effect on and from the Effective Date such that HG/AUST will be entitled to all benefits and rights in respect of the Insurance Contracts, and will assume all of the obligations in respect of the Assumed Liabilities as, from and including the Effective Date.

7. Implementation

HDI-GAUS and HG/AUST will do all acts and things and execute all documents necessary or desirable to give effect to the provisions of the Transfer Agreement, this Scheme and the Actuarial Report and the transactions contemplated by them.

8. Costs of Scheme

HG/AUST will bear all costs and expenses of and incidental to the preparation and confirmation of this Scheme and its implementation.

Schedule

Transfer Value - Methodology

The Transfer Value is equal to:

- (a) the value of HDI-GAUS's Net Insurance Liabilities (calculated in accordance with *Prudential Standard GPS 310 Audit and Actuarial Reporting and Valuation* made under the Insurance Act) as reported in the Accounts for the quarter ending 30 June 2010; plus
- (b) the amount, if any, of the Shortfall MCR as at the Effective Date, as calculated by the Appointed Actuary.